

CENTER FOR DISABILITY ACCESS
Chris Carson, Esq., SBN 280048
Raymond Ballister Jr., Esq., SBN 111282
Phyl Grace, Esq., SBN 171771
Dennis Price, Esq., SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Samuel Love,
Plaintiff,

v.

**Jack Alfred Nalbandian;
Diala George Nalbandian;
Noe Diaz Camargo; and Does 1-10,**
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Samuel Love complains of Defendants Jack Alfred Nalbandian; Diala George Nalbandian; Noe Diaz Camargo; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants Jack Alfred Nalbandian and Diala George Nalbandian

1 owned the real property located at or about 1347 N. Mount Vernon Avenue,
2 Colton, California, in April 2018.

3 3. Defendants Jack Alfred Nalbandian and Diala George Nalbandian own
4 the real property located at or about 1347 N. Mount Vernon Avenue, Colton,
5 California, currently.

6 4. Defendant Noe Diaz Camargo owned Diaz Smog located at or about
7 1347 N. Mount Vernon Avenue, Colton, California, in April 2018.

8 5. Defendant Noe Diaz Camargo owns Diaz Smog located at or about
9 1347 N. Mount Vernon Avenue, Colton, California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for the
16 events herein alleged, or is a necessary party for obtaining appropriate relief.
17 Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. The Court has subject matter jurisdiction over the action pursuant to 28
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to Diaz Smog in April 2018.

7 11. Diaz Smog is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Parking spaces are one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of Diaz Smog.

11 13. However, even though there were six parking spaces, none of the
12 parking spaces were marked and reserved for persons with disabilities during
13 Plaintiff's visit.

14 14. Currently, there is not a single parking space marked and reserved for
15 persons with disabilities.

16 15. On information and belief, Plaintiff alleges that the defendants once
17 had an accessible parking space marked and reserved for persons with
18 disabilities. Unfortunately, the parking space was allowed to fade or get paved
19 over.

20 16. Defendants do not have policy or procedure to ensure that parking
21 spaces reserved for persons with disabilities remain useable.

22 17. Defendants have failed to maintain in operable working condition those
23 features of facilities and equipment that are required to be readily accessible to
24 and usable by persons with disabilities at the Subject Property.

25 18. Plaintiff personally encountered this barrier.

26 19. This inaccessible parking lot denied the plaintiff full and equal access
27 and caused him difficulty, discomfort, and embarrassment.

28 20. Transaction counters are another one of the facilities, privileges, and

1 advantages offered by Defendants to patrons of Diaz Smog.

2 21. Meanwhile, and even though plaintiff did not personally confront the
3 barrier, the transaction counter at Diaz Smog is more than 36 inches in height.
4 In fact, the transaction counter is 40 inches high.

5 22. There is no lowered, 36 inch portion of the transaction counter at Diaz
6 Smog for use by persons in wheelchairs.

7 23. Plaintiff plans to return and patronize Diaz Smog but will be deterred
8 from visiting until the defendants remove the barriers.

9 24. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 25. The barriers identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 26. For example, there are numerous paint/stripe companies that will come
19 and stripe a parking stall and access aisle and install proper signage on rapid
20 notice, with very modest expense, sometimes as low as \$300 in full
21 compliance with federal and state access standards.

22 27. Another common barrier removal project is modifying transaction
23 counters to make a portion of the counter accessible. This is a simple
24 construction task, well within the capabilities of any general contractor. The
25 task can be completed easily and for a modest price.

26 28. Plaintiff is and has been deterred from returning and patronizing Diaz
27 Smog because of his knowledge of the barriers that exist. Plaintiff will,
28 nonetheless, return to the business to assess ongoing compliance with the

1 ADA and will return to patronize Diaz Smog as a customer once the barriers
2 are removed.

3 29. Given the obvious and blatant nature of the violations and barriers
4 alleged herein, the plaintiff alleges, on information and belief, that there are
5 other violations and barriers on the site that relate to his disability. Plaintiff will
6 amend the Complaint to provide proper notice regarding the scope of this
7 lawsuit once he conducts a site inspection. However, please be on notice that
8 the plaintiff seeks to have all barriers related to his disability remedied. See
9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
10 encounters one barrier at a site, he can sue to have all barriers that relate to her
11 disability removed regardless of whether he personally encountered them).

12 30. Additionally, on information and belief, the plaintiff alleges that the
13 failure to remove these barriers was intentional because: (1) these particular
14 barriers are intuitive and obvious; (2) the defendants exercised control and
15 dominion over the conditions at this location and, therefore, the lack of
16 accessible facilities was not an “accident” because, had the defendants
17 intended any other configuration, they had the means and ability to make the
18 change.

19
20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
21 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 31. Plaintiff re-pleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 32. Under the ADA, it is an act of discrimination to fail to ensure that the
27 privileges, advantages, accommodations, facilities, goods and services of any
28 place of public accommodation is offered on a full and equal basis by anyone

1 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
2 § 12182(a). Discrimination is defined, inter alia, as follows:

- 3 a. A failure to make reasonable modifications in policies, practices,
4 or procedures, when such modifications are necessary to afford
5 goods, services, facilities, privileges, advantages, or
6 accommodations to individuals with disabilities, unless the
7 accommodation would work a fundamental alteration of those
8 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to remove architectural barriers where such removal is
10 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
11 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
12 Appendix “D.”
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 33. Any business that provides parking spaces must provide a sufficient
22 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
23 Standards § 208. The required minimum number of handicap parking spaces
24 is dependent on the total number of parking spaces available. *Id.* According to
25 the 1991 Standards, if a parking lot has 1-25 spaces, it must have at least 1
26 accessible parking space. 1991 Standards § 4.1.2(5)(a). And 1 in every 8 of
27 those accessible parking spaces, but not less than 1, must be a “van” accessible
28 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §

1 4.1.2(5)(b). Under the 2010 Standards, a parking lot with 1-25 spaces must
2 have at least 1 accessible space and 1 of them must be van accessible. 2010
3 Standards § 208.2 & § 208.2.4.

4 34. Here, the failure to provide accessible parking spaces is a violation of the
5 ADA.

6 35. In areas used for transactions where counters have cash registers and
7 are provided for sales or distribution of goods or services to the public, at least
8 one of each type shall have a portion of the counter which is at least 36 inches
9 in length with a maximum height of 36 inches above the floor. 1991 Standards
10 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
11 counter is a parallel approach, such as in this case, there must be a portion of
12 the sales counter that is no higher than 36 inches above the floor and 36 inches
13 in width and must extend the same depth as the rest of the sales or service
14 counter top. 2010 Standards § 904.4 & 904.4.1.

15 36. Here, no such accessible counter has been provided in violation of the
16 ADA.

17 37. A public accommodation must maintain in operable working condition
18 those features of its facilities and equipment that are required to be readily
19 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

20 38. Here, the failure to ensure that the accessible facilities were available
21 and ready to be used by the plaintiff is a violation of the law.

22 39. Given its location and options, plaintiff will continue to desire to
23 patronize Diaz Smog but he has been and will continue to be discriminated
24 against due to the lack of accessible facilities and, therefore, seeks injunctive
25 relief to remove the barriers.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 3 Code § 51-53.)

4 40. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
 7 that persons with disabilities are entitled to full and equal accommodations,
 8 advantages, facilities, privileges, or services in all business establishment of
 9 every kind whatsoever within the jurisdiction of the State of California. Cal.
 10 Civ. Code §51(b).

11 41. The Unruh Act also provides that a violation of the ADA, or of California
 12 state accessibility regulations, is a violation of the Unruh Act. Cal. Civ. Code,
 13 § 51(f); Arnold v. United Artists Theatre Circuit, Inc., 866 F.Supp. 433, 439
 14 (N.D.Cal.1994).

15 42. Defendants’ acts and omissions, as herein alleged, have violated the
 16 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
 17 rights to full and equal use of the accommodations, advantages, facilities,
 18 privileges, or services offered.

19 43. Defendants’ acts and omissions, as herein alleged, have also violated
 20 the Unruh Act by denying, or aiding or inciting the denial of, Plaintiff’s right to
 21 equal access arising from the provisions of the ADA (see Plaintiff’s First Cause
 22 of Action).

23 44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 24 discomfort or embarrassment for the plaintiff, the defendants are also each
 25 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 26 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12
13 Dated: April 24, 2018

CENTER FOR DISABILITY ACCESS

14
15 

16
17 By: _____

18 Chris Carson, Esq.
19 Attorney for plaintiff
20
21
22
23
24
25
26
27
28